

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
 UNITED STATES OF AMERICA, :
 :
 -against- :
 :
 JAMES KELLY, :
 :
 Defendant. :
 -----X

USDC SDNY
 DOCUMENT
 ELECTRONICALLY FILED
 DOC #: _____
 DATE FILED: 2/25/2025

1:23-cr-113-GHW

ORDER

GREGORY H. WOODS, United States District Judge:


During the first portion of the defendant’s sentencing proceeding, the Court questioned the Government regarding the factual basis for the proposed restitution and forfeiture award. The Government submitted a letter in response on February 25, 2025. Dkt. No. 201 (the “Letter”). The Letter does not identify testimony at trial that established the amount of the proposed award. Instead, the Letter attaches two police reports and argues that the Court “may rely on victim statements in police reports, such as those contained in Exhibits A and B, at sentencing.” Letter at 1. As described, the reports were attached as exhibits to the Letter, rather than an affidavit. No affirmation regarding the exhibits’ authenticity was presented to the Court.

The Letter does not describe the legal support for the Government’s position that the Court can make the requested determination using the methodology proposed by the Government. In particular, the Letter does not describe why the procedure proposed by the Government for the resolution of this factual question—a letter with unsworn attachments provided to the Court and defendant two days before a sentencing proceeding—“ensure[s] that the parties have an adequate opportunity to present relevant information.” Commentary USSG § 6A1.3.

The Court invites a further submission from the Government on this question no later than February 26, 2025.

SO ORDERED.

Dated: February 25, 2025
New York, New York



GREGORY H. WOODS
United States District Judge